

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 973 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAMINBANU D/O AOHMMED BAX

Versus

KURESHI JAMALUDDIN ABDULBhai

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Appearance:

MR NS SHETH for Petitioner  
MR PRAFUL J BHATT for Respondent No. 1  
PUBLIC PROSECUTOR for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/01/97

ORAL JUDGEMENT

Petitioner herein is an estranged wife who has been awarded monthly maintenance of Rs.300/- under section 125 of the Code of Criminal Procoedure from the date of the order.

2. Petitioner preferred miscellaneous criminal application no. 37 of 1985 before the learned Judicial

Magistrate, First Class, Ahmedabad and claimed that respondent No.1, her husband, had driven her out of the house and had neglected to maintain her. Said application was allowed by the learned Magistrate on 6th September, 1990. Learned Magistrate directed respondent No.1 to pay monthly maintenance of Rs.250/- to the petitioner from the date of the order i.e. from 6th September, 1990. Feeling aggrieved, petitioner preferred criminal revision application no. 188 of 1990 before the learned City Sessions Judge, Ahmedabad which was allowed partly and the amount of maintenance was enhanced to Rs.300/- to be paid from the date of the order of the learned Sessions Judge i.e. from 23rd January, 1991. Feeling aggrieved, the petitioner has preferred this petition under Article 227 of the Constitution.

3. It is contended that respondent No.1 was serving in Maize Products and considering his salary and his liability to maintain himself and other two children, petitioner ought to have been awarded a monthly maintenance of Rs.500/-. It is also contended that such maintenance should have been awarded from the date of the application and not from the date of the order as is directed by both the Courts below.

4. The learned Magistrate, considering the evidence placed on record, has found that respondent No. 1 after his marriage to the petitioner entered into a friendship agreement with some other woman and was residing with her. Considering this friendship agreement, the learned Magistrate held that the petitioner had sufficient reason to live away from her husband and she was entitled to maintenance under Section 125 of the Code. Considering the income of respondent No.1 and his liability to maintain other two children, the Court awarded monthly maintenance of Rs.250/- p.m. from the date of the order. The learned Magistrate, however, has not assigned any reason why the maintenance has been awarded from the date of the order and not from the date of the application as is ordinarily directed. The learned Sessions Judge, considering the salary of respondent No.1, came to the conclusion that the petitioner was entitled to monthly maintenance of Rs.300/- However, curiously, the learned Judge held that the petitioner's application for maintenance was decided after long delay and further, the petitioner had not made an application for interim maintenance and she, therefore, was not entitled to maintenance from the date of the application.

5. It is true that it is the discretion of the Court whether the maintenance should be allowed from the date

of the application or from the date of the order. However, the discretion is required to be exercised judiciously and in a fair manner. The petitioner could not have been denied maintenance from the date of the application merely because she had not made an application for interim maintenance. In fact, she did make an application for interim maintenance and on such application, learned Judge had awarded monthly interim maintenance of Rs.250/from the date of the application to 20th July, 1987. Since then, the petitioner did not make another application for interim maintenance nor did she prayed for extension of the order made on her application for interim maintenance. However, that cannot be made the sole ground for which the maintenance should be denied from the date of the application before the Magistrate. Further, the learned Magistrate has observed that the hearing of the application was delayed for several reasons which were not attributable to respondent No.1. However, it must be observed that if the application is not heard expeditiously on account of administrative reasons, the petitioner could not have been denied her right to maintenance from the date of the application. I am, therefore, of the opinion that the Courts below have failed to properly exercise their discretion under section 125 (2) of the Criminal Procedure Code. In the circumstances, the petitioner is entitled to maintenance from the date of her application before the learned Magistrate.

6. Next question that arises is what should be the amount of maintenance to be paid to the petitioner. It has been proved that the salary of respondent No.1 was Rs.1384/- and he had to maintain himself and their two children. Thus, petitioner has been allowed nearly 1/4th of the salary which cannot be said to be disproportionately low. I, therefore, do not intend to interfere with the amount of monthly maintenance awarded to the petitioner.

7. In view of the above discussion, this petition is partly allowed. The orders of the Courts below awarding monthly maintenance to the petitioner from the date of the order is modified. Petitioner shall be entitled to monthly maintenance of Rs.300/- [ Rs.three hundred only] with effect from the date of the application before the learned Magistrate. Respondent No.1 shall pay the difference of amount of maintenance calculated as directed hereinbefore to the petitioner within a period of three months from to day. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

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\*Vyas